

COURT OF APPEALS
DIVISION ONE

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

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STATE OF WASHINGTON
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Supreme Ct No. _____

COA No. 25923-4-III

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CLERK OF SUPREME COURT
STATE OF WASHINGTON

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JAMES D. RIVARD, Petitioner

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

James Rivard asks this court to accept review of the decision of Division Three of the Court of Appeals terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

The opinion was filed on October 7, 2008. A copy of the decision is in the Appendix at pages A-1 through A-4.

C. ISSUES PRESENTED FOR REVIEW

1. Under *State v. Paulson*, 131 Wn. App. 579, 588, 128 P.3d 133 (2006), a sentencing court may only impose statutorily authorized sentences. Should this Court accept review of a case where Division III acknowledged the sentencing court lacked authority to strip the right to possess firearms, but held that subsequent statutory changes precluded restoration of the right to possess firearms?

2. Under the *ex post facto* laws of both the federal and state constitutions, U.S. Const. art. 1, § 10; Const. art. 1, § 23, as well as under the Savings Clause, RCW 10.01.040, and *State v. Schmidt*, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001), the law in effect at the time a criminal offense is actually committed controls the disposition of the case. Should this Court

accept review of a case where Division III held that a legislative classification of a "B" felony on the date of the crime was "irrelevant", for purposes of restoring firearm rights, and the current "A" classification precluded restoring the right to possess firearms?

D. STATEMENT OF THE CASE

Mr. Rivard was charged on February 8, 1994, with Vehicular Homicide under former RCW 46.61.520 as the result of an accident that occurred on December 1, 1993.

At the time of the accident, vehicular homicide was a class "B" felony. Former RCW 46.61.520(2) (1993). The statutes in effect in 1993 only prohibited firearm ownership by persons who were convicted of "a crime of violence," which was defined as "a class A felony." (Former RCW 9.41.040(1) (1993); former RCW 9.41.010(2)(a) (1993)). As a result, in 1993 a conviction for vehicular homicide did not result in losing the right to possess firearms.

The following year, in a special legislative session, the legislature amended the firearm restoration statute to preclude gun ownership by persons who were convicted of "any serious offense." Former RCW 9.41.040(1)(a); Laws of 1994, ch. 7, § 402. In that same session, the Legislature added a new definition of "serious offense" that included

“vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner.” Laws of 1994, ch. 7, § 401. As a result, after 1994, a conviction for vehicular homicide resulted in losing the right to possess firearms.

In 1996, the legislature reclassified vehicular homicide as a Class “A” felony. (Laws of 1996, ch. 199 § 7)

Mr. Rivard’s criminal trial ultimately resulted in a Supreme Court opinion filed in January, 1997. On June 20, 1997, Mr. Rivard entered a guilty plea, pursuant to a plea agreement. He was sentenced under the First Offender Option.

But none of the parties seemingly noticed the portion of Mr. Rivard’s 1997 judgment and sentence that prohibited him from possessing firearms:

5.6 FIREARMS. You may not own, use or possess any firearm unless your right to do so is restored by a court of record...

(See Ex. C at 8) That provision was not crossed off the judgment and sentence.

Mr. Rivard served his time, paid his legal financial obligations and was granted a Certificate and Order of Discharge on November 30, 1999. Other than the conviction for vehicular homicide, Mr. Rivard has no criminal history.

On September 20, 2006, Mr. Rivard petitioned for restoration of his right to possess firearms. The trial court reinstated his rights, noting that despite the change in the law, Mr. Rivard's 1997 conviction was treated by the trial court and the prosecutor's office as a Class "B" felony. The trial court also held that under the Savings Clause, Mr. Rivard's conviction for Vehicular Homicide properly remained a Class "B" felony at present. (*See* Ex. C)

Additionally, the trial court found that the language of RCW 9.41.040(4)(b)(i) referring to a conviction of a felony means the classification of the felony at the time of the conviction, not any subsequent reclassification of the crime. The trial court ruled that the plain meaning of RCW 9.41.040(4)(b)(i) "prior felony convictions" is felony convictions other than the disabling felony conviction.

The court concluded that because Mr. Rivard had no other prior felony convictions that would prohibit possession of a firearm counted as part of the offender score under RCW 9.94A.525, he had fulfilled all the requirements of RCW 9.41.040 and the court restored his right to possess firearms.

The State appealed. The Court of Appeals, Division III initially affirmed the trial court on the basis that the sentencing court was without

authority to strip Mr. Rivard of his rights to possess firearms as a result of a vehicular homicide that occurred in 1993:

The statute in effect on the date of Mr. Rivard's crime, however, only authorized the sentencing court to suspend Mr. Rivard's right to possess firearms while he was under the Department of Corrections (DOC) supervision. We conclude that the prohibition against possession of firearms ended when DOC's supervision ended. And we affirm the decision of the trial court restoring his right to possess firearms.

(See Ex. B)

Subsequently, the State moved for reconsideration, arguing that the statutes in effect on the date of the petition for restoration governed whether Mr. Rivard was eligible to restore his rights. Division III agreed, and reversed itself. (See Ex. A)

Mr. Rivard now seeks review by the Washington State Supreme Court.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Review should be granted when a decision of the Court of Appeals conflicts with a decision of the Supreme Court or another division of the Court of Appeals, or involves a significant question of constitutional law or an issue of substantial public interest. RAP 13.4(b).

Review should be granted in this case because the Court of Appeals Division III decision is in conflict with former RCW 9.94A.120(13) (1993)

and RCW 9.941.040(1); *State v. Paulson*, 131 Wn. App. 579, 588, 128 P.3d 133 (2006), the federal and state constitutional prohibitions against application of ex post facto laws, as well as *State v. Schmidt*, 143 Wn.2d at 673-74. Restoration of the right to possess firearms also involves an issue of substantial public interest.

In sum, Division III's reconsidered opinion in this case is contrary to current statutes, constitutional principles, and relies upon cases that fail to provide authority for the court's holding.

1. DIVISION III'S OPINION IGNORES THE FACT THAT THE SENTENCING COURT LACKED AUTHORITY TO PROHIBIT MR. RIVARD'S POSSESSION OF FIREARMS AND UNDER WELL-SETTLED LAW, THAT PORTION OF HIS SENTENCE IS VOID.

In its first opinion, Division III correctly noted, "The sentencing court then had no authority to revoke Mr. Rivard's right to possess firearms for a period longer than his DOC supervision. That supervision ended on or about November 30, 1999." *Slip Op. at 4*.

In its reconsidered opinion, Division III again acknowledged "the law in 1993 prohibited Mr. Rivard from possessing a firearm but only while he was under DOC supervision." *Slip Op. at 2*. But the court seemingly ignored this basic principle, and held that notwithstanding the sentencing

court's clear lack of authority to remove his gun rights, Mr. Rivard was not eligible for restoration of these rights.

Division III's conclusion defies well-settled precedent. The clear rule of law dictates that court action imposing an invalid or unauthorized sentence is void. *See State v. Paulson*, 131 Wn. App. at 588. Moreover, it is the obligation of a court discovering a sentencing error to correct it. *State v. Cayenne*, 139 Wn. App. 114, 118, 158 P.3d 623 (2007). In this case, Division III did just the opposite – it gave the sentencing court's unauthorized sentence continuing validity. Division III's reconsidered opinion was contrary to well-settled caselaw, and this Court should accept review.

2. DIVISION III's DECISION CONTRADICTS
AUTHORITATIVE CASELAW THAT REQUIRES
THE COURT TO APPLY THE LAW IN EFFECT
ON THE DATE OF THE CRIME TO
SUBSEQUENT PROCEEDINGS.

The court's opinion is based upon the principle that the legislature can modify the statutes related to restoration of gun rights because those statutes do not change the quantum of punishment, and are not punitive and instead are regulatory.

But in its analysis, Division III made an unsupportable leap when it concluded that because the legislature can amend the firearm possession

regulations, Mr. Rivard may be considered a class "A" felon. In so leaping, the appellate court confuses these two, separate and distinct temporal concepts: (1) the amendments to the restoration of gun rights are applied at the time of the petition; and (2) the classification and consequences attendant to a felony remain as they existed on the date of the crime. Division III confused these two concepts, treated them as one, and found a causal relationship that does not exist: that because the gun rights restoration process may change and petitioners are subject to the new requirements, therefore substantive changes in crimes, such as felony reclassification, also apply to a petitioner seeking firearm rights restoration.

- a. The *Ex Post Facto* Clauses Of Both The Federal And State Constitutions Prohibit Increasing The Quantum Of Punishment For A Crime After It Is Committed.

Division III is correct that the legislature may amend the gun rights restoration process and statutes without running afoul of *ex post facto* laws. But the legislature may not change the consequences attendant to a crime and impose those consequences retroactively after the date the crime was committed. The *ex post facto* clauses of the state and federal constitutions prohibit the state from enacting any law that imposes punishment for an act that was not punishable when committed, or which increases the quantum of punishment for the offense after the crime was committed. U.S. Const. art.

1, § 10; Const. art. 1, § 23; *State v. Ward*, 123 Wn.2d 488, 496, 869 P.2d 1062 (1994).

In its brief opinion, Division III cursorily concluded “he is not entitled to have his right restored because he has been convicted of a crime which is classified as a class A felony.” *Id.*

The court’s opinion failed to discuss or analyze the effect of the legislature’s reclassification of vehicular homicide, the change from former RCW 46.61.520(2) (1993) to the current statute. Certainly, increasing the classification of a felony from a “B” to an “A” increases the quantum of punishment for the offense. Division III’s implicit conclusion that it does not is novel, and untenable.

Moreover, Division III’s conclusion that Mr. Rivard was convicted of a class “A” felony is wrong. The record clearly indicates he was not convicted of a class “A” felony, despite the fact that on the date of his sentencing, vehicular manslaughter had been reclassified and was in fact a class “A”. If the sentencing court and the State had considered Mr. Rivard as a class “A” felon, he would have been ineligible to receive the first time offender sentence the court imposed.

- b. Under RCW 10.01.040, the “savings clause”, Mr. Rivard’s vehicular homicide remains a Class B felony.

Under the “saving clause,” Mr. Rivard’s conviction for vehicular homicide remains a Class B felony, despite the subsequent legislative reclassification:

... Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act....

RCW 10.01.040; *see also State v. Lindsey*, 194 Wash. 129, 132, 77 P.2d 596 (1938) (court committed error in sentencing under a subsequently enacted law when crime was committed prior to amendment); *State v. Kane*, 101 Wn. App. 607, 5 P.3d 741 (2000) (in the absence of a contrary expression from the legislature, all crimes are to be prosecuted under the law existing at the time of their commission); *In re Hartzell*, 108 Wn. App. 934, 945, 33 P.3d 1096 (2001) (when the sentence for a crime is increased during the period within which the crime was allegedly committed, and the crime was committed before the increase went into effect, the lesser sentence must be imposed.)

The Legislature failed to express a contrary intention in the amendment reclassifying the felony from a class B to a class A.

While caselaw indicates that the gun rights restoration statute is regulatory and therefore not part of an offender's punishment, no case law exists contradicting the explicit language of the savings clause: "*forfeitures* incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment..." RCW 10.01.040 (emphasis added). Under the plain language, the loss of one's right to possess a firearm is a forfeiture. A "forfeiture" is defined as "something to which the right is lost by the commission of a crime or fault or the losing of something by way of penalty." Black's Law Dictionary, 584 (5th ed. 1979). The loss of the right to possess firearms as a result of a crime constitutes a forfeiture. Under the savings clause, this forfeiture must be enforced as if the vehicular homicide statute had not been reclassified. As a result, Mr. Rivard's conviction should be considered a class "B" felony, and thus he is eligible for restoration of his right to possess firearms. RCW 9.41.040(4)(b)(i).

- c. Allowing The State To Now Benefit From
The Sentencing Court's Error Is Contrary To
Existing Law.

Perhaps the most alarming reasoning implicit in the court's opinion was articulated by the State in its reconsideration argument. The State offered a hypothetical that if Mr. Rivard had been properly sentenced

without the provision dispossessing him of his gun rights, and if had moved to restore his gun rights at the expiration of his DOC supervision¹, he would have had his rights restored. But, the State argues, because Mr. Rivard relied upon the court's sentencing mistake and did not immediately challenge the court's unauthorized restriction of his rights, he is now precluded from regaining these rights because the laws changed and vehicular homicide is now a Class A felony.

The State's argument is obviously flawed because the legislature reclassified the vehicular homicide felony well in advance of Mr. Rivard's sentencing. But more importantly, the State's encouragement to the court to punish Mr. Rivard for relying upon the sentencing court's unauthorized and legally invalid sentence is repugnant, as well as contrary to well-established law.

The Washington Supreme Court held that where a sentencing court erred by not checking the paragraphs on the preprinted order prohibiting possession of firearms, the court affirmatively misled the defendant. As a result, his convictions were dismissed. *State v. Minor*, 162 Wn.2d 796, 174 P.3d 1162 (2008).

¹ Under the statutes in effect at the time, Mr. Rivard's right to possess firearms was restored automatically after DOC supervision ended. Former RCW 9.94A.120(13) (1993); former RCW 9.41.040(1) (1992).

This case is similar to *Minor*. By failing to cross out the inapplicable paragraph related to the prohibition against possessing firearms, the court affirmatively misled Mr. Rivard related to whether he could possess a firearm. The State should not now be allowed to exploit and benefit from the sentencing court's error.

Until this case, no caselaw existed deciding the issue of whether the effect of a reclassification of a felony from "B" to "A" is a consequence that increases the quantum of punishment as it relates to restoration of gun rights. Individuals convicted of certain "B" felonies are eligible for restoration of the right to possess a firearm. In contrast, those convicted of "A" felonies are never eligible for restoration of the right to possess firearms. This court should accept review and decide this issue of first impression.

F. CONCLUSION

Because the sentencing court's order removing Mr. Rivard's right to possess firearms was without authority and therefore void, Division III's decision to deny Mr. Rivard's petition to restore his firearm rights was contrary to existing law.

Moreover, Division III's conclusion that the legislative classification of a "B" felony on the date of the crime was "irrelevant", for purposes of restoring firearm rights, and the current "A" classification precluded

restoring the right to possess firearms is both a matter of first impression and contrary to existing caselaw, statutes and violates the *ex post facto* laws of both the state and federal constitutions.

Review should be granted, and the decision of the Court of Appeals should be reversed.

Respectfully submitted this 5th day of November, 2008.


Julia A. Dooris #22907
Attorney for Petitioner

APPENDIX A

FILED

OCT -7 2008



COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III**

In re the Petition of:

No. 25923-4-III

JAMES DOUGLAS RIVARD.

STATE OF WASHINGTON,

Appellant,

v.

JAMES D. RIVARD,

Respondent.

**ORDER GRANTING MOTION FOR
RECONSIDERATION AND
WITHDRAWING OPINION**

THE COURT has considered appellant's motion for reconsideration and the answer thereto, and is of the opinion the motion should be granted. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of May 22, 2008, is hereby granted.

IT IS FURTHER ORDERED, the court's opinion filed May 22, 2008, is hereby withdrawn and a new opinion will be filed this day.

DATED: October 7, 2008

FOR THE COURT:

JOHN A. SCHULTHEIS, Chief Judge

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Petition of:

No. 25923-4-III

JAMES DOUGLAS RIVARD.

STATE OF WASHINGTON,

Appellant,

v.

JAMES D. RIVARD,

Respondent.

Division Three

PUBLISHED OPINION

Sweeney, J.—The trial court granted James D. Rivard’s petition to restore his right to possess a firearm. We first decided that the original sentencing court did not have authority to suspend Mr. Rivard’s license beyond his period of Department of Corrections (DOC) supervision. We relied on former RCW 9.41.040 (1992) and former RCW 9.94A.120 (1993). The State moved for reconsideration. It argues that we should have applied the law in effect on the date Mr. Rivard petitioned to have his right to possess

firearms restored (September 20, 2006) and the date the court actually restored those rights (January 26, 2007). The State argues that the law in effect on the date he was originally sentenced for vehicular homicide is irrelevant. We conclude the State is correct. We then reverse the trial court's order restoring his right to possess firearms.

FACTS

The State charged James D. Rivard with vehicular homicide in February 1994 as a result of an automobile accident on December 1, 1993. Vehicular homicide was a class B felony at the time. Mr. Rivard pleaded guilty to vehicular homicide in June 1997. The judgment and sentence were entered according to the vehicular homicide statute in effect in 1993. *See Clerk's Papers* at 29. And the law in 1993 prohibited Mr. Rivard from possessing a firearm but only while he was under DOC supervision. Former RCW 9.94A.120(13) (1993); former RCW 9.41.040(1) (1992).

The legislature reclassified vehicular homicide from a class B felony to a class A felony in 1996. Laws of 1996, ch. 199, § 7. The law now prohibits those convicted of "any felony defined under any law as a class A felony" from ever possessing a firearm. RCW 9.41.040(4).

The trial court here granted Mr. Rivard's petition to restore his right to possess firearms. The State appealed. We concluded, on authority of former RCW 9.94A.120(13) (1993) and former RCW 9.41.040(1) (1992), that the sentencing court did

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not have authority, under 1993 law, to restrict Mr. Rivard's right to possess firearms after he was no longer subject to DOC supervision. And we affirmed the decision of the trial judge restoring Mr. Rivard's right to possess a firearm. The State moved for reconsideration.

DISCUSSION

The State argues, among other things, that the legislature can modify gun possession laws without violating constitutional prohibitions against ex post facto laws because such laws do not change the quantum of punishment for the original crime. *State v. Watkins*, 76 Wn. App. 726, 732, 887 P.2d 492 (1995). And the prohibition against ex post facto laws applies only to statutes that impose punishment. *State v. Schmidt*, 143 Wn.2d 658, 674, 23 P.3d 462 (2001), *aff'g State v. Schmidt*, 100 Wn. App. 297, 300 n.7, 996 P.2d 1119 (2000). The legislature's 1994 and 1995 amendments to RCW 9.41.040 were not punitive; they were regulatory. They restricted gun ownership. Laws of 1994, 1st Spec. Sess., ch. 7, § 402 (making it illegal for persons convicted of vehicular homicide to possess firearms); Laws of 1995, ch. 129, § 16 (requiring eligible offenders to petition for restoration of right to possess firearms). The amendments merely altered the collateral consequences of Mr. Rivard's conviction. *Schmidt*, 143 Wn.2d at 676. And case law suggests that the legislature intended such amendments to be retroactive. *See State v. Reed*, 84 Wn. App. 379, 385-87, 928 P.2d 469 (1997) (statutory notice plan).

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State v. Rivard

Possession of firearms has always been subject to government regulation for safety purposes. *Schmidt*, 143 Wn.2d at 676. The legislature can prohibit convicted felons from possessing firearms. *State v. Krzeszowski*, 106 Wn. App. 638, 641, 24 P.3d 485 (2001). RCW 9.41.040 is such a restriction.

The amended version of RCW 9.41.040 then applies to Mr. Rivard. *See Schmidt*, 100 Wn. App. at 300 (regulations can be applied to past conduct without violating the ex post facto clause). And he is not entitled to have his right restored because he has been convicted of a crime which is classified as a class A felony. RCW 9.41.040(4).

We conclude then that the trial court erred when it granted his petition and restored his right to possess firearms.

Moreover, Mr. Rivard could not possess a firearm lawfully even if we affirmed the trial court here. Mr. Rivard's vehicular homicide conviction is a serious offense. RCW 9.41.010(12)(l). RCW 9.41.040(1)(a) prohibits offenders convicted of serious offenses from possessing firearms:

A person . . . is guilty of the crime of unlawful possession of a firearm . . . if the person owns, has in his . . . possession, or has in his . . . control any firearm after having previously been convicted in this state . . . of any serious offense.

(Emphasis added.)

We reverse the trial judge's decision to restore the right to possess firearms here.

I CONCUR:

Sweeney, J.

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Brown, J.

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Thompson, J.* (dissenting) — I respectfully dissent. Although I agree with the majority that the legislature has the power to regulate the possession of firearms and that RCW 9.41.040 prohibits persons convicted of a class A felony from possessing firearms, I disagree with the majority's conclusion that amended RCW 9.41.040 precludes James D. Rivard from ever possessing a firearm. I do so because under well settled law, Mr. Rivard was not convicted of a class A felony.

The law in effect at the time a criminal offense is committed controls the disposition of the case. *State v. Schmidt*, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001). On the date of the commission of the crime, December 1, 1993, vehicular homicide was classified as a class B felony. Former RCW 46.61.520 (1991). At that time, former RCW 9.41.040 (1992) did not prohibit a person convicted of vehicular homicide from possessing firearms. That prohibition was added in 1994. LAWS OF 1994, 1st Spec. Sess., ch. 7, §§ 401, 402. The statute in effect on the date of the crime only authorized

* Judge Philip J. Thompson is serving as a judge pro tempore of the Court of Appeals pursuant to RCW 2.06.150.

the sentencing court to suspend Mr. Rivard's right to possess firearms while he was under Department of Corrections (DOC) supervision. Former RCW 9.94A.120(13) (1993). Therefore, we correctly concluded in our original opinion that the sentencing court had no authority to revoke Mr. Rivard's right to possess firearms beyond his DOC supervision.

Despite the rule that we apply the law in effect at the time a crime is committed, the majority asserts that the law in effect on the date Mr. Rivard petitioned to restore his right to possess firearms is the applicable law here. Relying primarily on *Schmidt*, 143 Wn.2d 658 and *State v. Watkins*, 76 Wn. App. 726, 887 P.2d 492 (1995), the majority reasons that because the 1994 and 1995 amendments to former RCW 9.41.040 merely altered the collateral consequences of Mr. Rivard's conviction and constituted permissible legislative regulations on gun possession, the amended version of RCW 9.41.040 could be applied without violating ex post facto laws.

However, *Schmidt* and *Watkins* are distinguishable. Unlike this case, they involved two offenses—the predicate offense and the subsequent RCW 9.41.040 violation. Accordingly, *Schmidt* and *Watkins* start their analyses with the defendants' possession offenses. Such an approach is not applicable here where the only offense at issue is the predicate offense of vehicular homicide, which was a class B felony when committed.

In *Watkins* and *Schmidt* the predicate crimes (a felony drug offense, second degree assault, and first degree theft) were not violations of former RCW 9.41.040 when committed. After the commission of the predicate offenses, the legislature amended chapter 9.41 RCW prohibiting persons convicted of these crimes from possessing firearms. *Watkins*, 76 Wn. App. at 731-32; *Schmidt*, 143 Wn.2d at 662, 664-65. Both courts held that the respective amendments did not violate ex post facto prohibitions even though the predicate felonies occurred before the amendment. *Watkins*, 76 Wn. App. at 732; *Schmidt*, 143 Wn.2d at 678.

The *Watkins* court pointed out that the amendment at issue in that case did not increase punishment for the predicate crime; rather, it “created a new substantive offense, *i.e.*, possession of a short firearm or pistol.” *Watkins*, 76 Wn. App. at 732. Because the defendant committed the new offense after the amendment became effective, the court concluded that the amendment did not violate ex post facto prohibitions. *Id.* Similarly, the *Schmidt* court reasoned that the amendments to chapter 9.41 RCW did not constitute ex post facto laws because they “did not punish petitioners for past offenses nor increase their punishment for prior convictions.” *Schmidt*, 143 Wn.2d at 678.

However, the facts of this case are distinguishable. Mr. Rivard was not convicted of unlawful possession of a firearm under RCW 9.41.040. Rather, after his conviction for vehicular homicide, the legislature redefined the crime as a class A felony. In

Watkins and *Schmidt*, the predicate crimes were never reclassified. The amendments at issue in those cases simply forbade the possession of firearms by those convicted of certain predicate felonies. Thus, in *Schmidt* and *Watkins*, the amended sections of chapter 9.41 RCW used to impose collateral consequences were the ones in existence when the defendants were charged with firearm possession. Accordingly, they were not retroactive. Such is not the case here. Here, the State attempts to impose the consequences of a class A felony to a crime that was defined as a class B felony when committed in 1993.

Mr. Rivard's right to possess firearms was restored automatically after DOC supervision ended. Former RCW 9.94A.120(13) (1993); former RCW 9.41.040(1) (1992). I would affirm the decision of the trial court restoring Mr. Rivard's right to possess firearms.

Thompson, J.P.T.

APPENDIX B

FILED

MAY 22 2008

In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Petition of:)	No. 25923-4-III
)	
JAMES DOUGLAS RIVARD.)	
)	
STATE OF WASHINGTON,)	
)	Division Three
Appellant,)	
)	
v.)	
)	
JAMES D. RIVARD,)	
)	PUBLISHED OPINION
Respondent.)	

SWEENEY, J.—The State of Washington appeals the trial court’s decision to restore James D. Rivard’s right to possess firearms. Mr. Rivard was convicted of vehicular homicide in 1997. The accident happened in 1993. He petitioned to have his gun right restored in 2006. Between the date of the crime and his sentencing, the legislature reclassified vehicular homicide from a class B felony to a class A felony. Class A felons are never entitled to have their right to possess firearms restored. The statute in effect on the date of Mr. Rivard’s crime, however, only authorized the sentencing court to suspend Mr. Rivard’s right to possess firearms while he was under the

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State v. Rivard

Department of Corrections' (DOC) supervision. We conclude that the prohibition against possession of firearms ended when DOC's supervision ended. And we affirm the decision of the trial court restoring his right to possess firearms.

FACTS

Mr. Rivard struck and killed a boy with his car in December 1993. He pleaded guilty to vehicular homicide and the court sentenced him on June 20, 1997. The court used a judgment and sentence form that had not been revised since 1995. Clerk's Papers (CP) at 29. Paragraph 4.3 of that form states: "The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120." CP at 33. Paragraph 5.6 states:

FIREARMS. You may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047.

CP at 36. The form instructs the sentencing court to cross off paragraph 5.6 if it does not apply. CP at 36. The court did not cross off the paragraph. CP at 36.

Mr. Rivard served his sentence and paid his court-imposed financial obligations. The court granted him a certificate and order of discharge in November 1999. He then petitioned the court to restore his right to possess firearms in September 2006. The trial court granted his petition in January 2007. The State appeals that decision.

DISCUSSION

Our review is, of course, de novo because the choice, interpretation, and application of a statute to particular facts are questions of law. *State v. Ayala*, 108 Wn. App. 480, 484, 31 P.3d 58 (2001). We can also affirm on any ground supported by the record and the law. *State v. White*, 137 Wn. App. 227, 230, 152 P.3d 364 (2007); *State v. Bradley*, 105 Wn. App. 30, 38, 18 P.3d 602, 27 P.3d 613 (2001).

Here, the sentencing court used a fill-in-the-blank Washington court form (Judgment and Sentence) to impose judgment and sentence upon Mr. Rivard. CP at 29. The form contains boilerplate language that forbids a defendant from possessing firearms. It contains two sections relevant here. First, pursuant to RCW 9.94A.120, paragraph 4.3 revokes an offender's firearms right while DOC supervises him. Former RCW 9.94A.120(13) (1993) revoked the firearms right of all offenders under DOC supervision, and so did former RCW 9.94A.120(15) (1997).

Second, paragraph 5.6 revokes a defendant's firearms right until a court restores it pursuant to RCW 9.41.040(4)(b)(i) (restoration petition requirements) and RCW 9.41.047 (restoration of possession rights). But former RCW 9.41.040 (1992) did not prohibit a person convicted of vehicular homicide from possessing firearms. The legislature did not add that prohibition until 1994. LAWS OF 1994, 1st Spec. Sess., ch. 7, § 402; LAWS OF 1994, 1st Spec. Sess., ch. 7, § 401. The sentencing court then had no authority to revoke

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State v. Rivard

Mr. Rivard's right to possess firearms for a period longer than his DOC supervision. That supervision ended on or about November 30, 1999.

The State argues nonetheless that laws in effect in 1993 or 1997 are not relevant. The pertinent date, it contends, is the date Mr. Rivard petitioned for restoration. And Mr. Rivard's crime of vehicular homicide is currently a disabling crime (a class A felony) under RCW 9A.040(4). From this, the State argues that Mr. Rivard would never be entitled to have his right to possess firearms restored.

Sentencing courts may impose only statutorily authorized sentences. *State v. Paulson*, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). They do not have legal authority to sentence an offender beyond that authorized by the legislature. *In re Pers. Restraint of Fleming*, 129 Wn.2d 529, 533, 919 P.2d 66 (1996). And the law in effect at the time a criminal offense is actually committed controls disposition of the case. *State v. Schmidt*, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001).

So a trial court's action is void if it exceeds its sentencing authority. *Paulson*, 131 Wn. App. at 588 (citing *State v. Phelps*, 113 Wn. App. 347, 355, 57 P.3d 624 (2002)). And "[w]hen a sentence has been imposed for which there is no authority in law, the trial court has the power and duty to correct the erroneous sentence, when the error is discovered." *State v. Cayenne*, 139 Wn. App. 114, 118, 158 P.3d 623 (2007) (emphasis omitted) (quoting *McNutt v. Delmore*, 47 Wn.2d 563, 565, 288 P.2d 848 (1955)), review granted, 180 P.3d 1292 (2008); *In re Pers. Restraint of Carle*, 93 Wn.2d 31, 33, 604 P.2d

1293 (1980); *State v. Williams*, 51 Wn.2d 182, 185, 316 P.2d 913 (1957). We apply clear statutes according to their plain language. *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 948, 162 P.3d 413 (2007).

Mr. Rivard's vehicular homicide conviction stems from an offense he committed on December 1, 1993. So the law in effect in 1993 set the sentencing court's authority to revoke Mr. Rivard's firearms right. *Schmidt*, 143 Wn.2d at 673-74.

Here, the plain language of the relevant statutory provisions did not authorize the court to revoke the firearms right of a person convicted of vehicular homicide beyond the time that the offender was subject to DOC supervision. Former RCW 9.94A.120(13) (1993); former RCW 9.41.040(1) (1992).

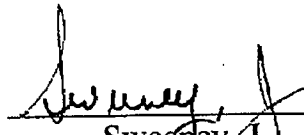
First, former RCW 9.94A.120(13) (1993) prohibited an offender from owning, using, or possessing firearms or ammunition while under DOC supervision. And, second, former RCW 9.41.040(1) (1992) stated that a person convicted of a "crime of violence" or a "felony in which a firearm was used or displayed" could not own or possess short firearms or pistols. A "crime of violence" did not include vehicular homicide. Former RCW 9.41.010(2) (1992); former RCW 46.61.520(2) (1991). Mr. Rivard, of course, did not use or display a firearm during the commission of his vehicular homicide offense.

The court then exceeded its authority to revoke Mr. Rivard's firearms right when it failed to cross off paragraph 5.6 of the judgment and sentence form. That portion of the court's order is void. *See Cayenne*, 139 Wn. App. at 118.

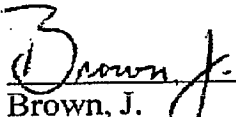
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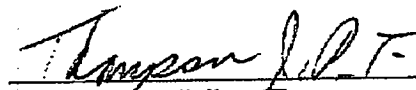
Mr. Rivard's firearms right was restored automatically after DOC no longer supervised him.

We affirm the decision of the trial court restoring Mr. Rivard's right to possess firearms.


Sweeney, J.

WE CONCUR:


Brown, J.


Thompson, J. Pro Tem.

APPENDIX C

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SPOKANE CO. CLERK
SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

FILED

JUN 20 1997

STATE OF WASHINGTON, Plaintiff,

NO. 94-1-00132-0

v.

PA# 94-9-86604-0
RPT# 02-93-98284
RCW 46.61.520-F (#23001)

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

JAMES DOUGLAS RIVARD
WM 102067
Defendant. **DEBTOR**

SID: 016822802

JUDGMENT AND SENTENCE (JS)
[] Prison
[] Persistent Offender
[] Jail One Year or Less
☒ First Time Offender
[] Special Sexual Offender
Sentencing Alternative
[] Special Drug Offender Sentencing
Alternative

I. HEARING

1.1 A sentencing hearing was held and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on 6-20-97 by ☒ plea [] jury verdict [] bench trial of:

Count No.: I Crime: VEHICULAR HOMICIDE
RCW 46.61.520-F (#23001)
Date of Crime DECEMBER 1, 1993
Incident No. 02-93-98284

Count No.: Crime:
RCW
Date of Crime
Incident No.

Count No.: Crime:
RCW
Date of Crime
Incident No.

COURT COSTS 110
VICTIM ASSES. 100
RESTITUTION _____
FINE _____
DRUG EMP. FUND _____
OTHER COSTS _____

as charged in the Information

- [] Additional current offenses are attached in Appendix 2.1
[] A special verdict/finding for use of a firearm was returned on Count(s) _____. RCW 9.94A.125, .310
[] A special verdict/finding for use of a deadly weapon other than a firearm was returned on Count(s) _____. RCW 9.94A.125, .310

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JUDGMENT AND SENTENCE (Felony)
(RCW 9.94A.110, .120) (WDF CR 84.0400 (7/95))

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[] A special verdict/finding of sexual motivation was returned on Count (s) _____. RCW 9.94A.127

[] A special verdict/finding for Violation of the Uniform Controlled Substances Act was returned on Count (s) _____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public stop shelter.

[] The defendant was convicted of vehicular homicide which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030

[] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

[] Other current conviction listed under different cause numbers used in calculating the offender score are (list offense and cause number):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

Crime	Date of Crime	Crime Type	Adult or Juv	Place of Conviction	Sent. Date
<i>No known criminal history</i>					

[] Additional criminal history is attached in Appendix 2.2.

[] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360

[] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 SENTENCING - FA:

CT NO	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus enhancement for Firearm (F), other deadly weapon finding (D), or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	VII	15 to 30 mo		15 to 20 mo	10 YRS / \$50,000

☐ Additional current offense sentencing data in Appendix 2.3

2.4 ☐ **EXCEPTIONAL SENTENCE:** Substantial and compelling reasons exist which justify an exceptional sentence ☐ above ☐ within ☐ below the standard range for Count(s) _____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142): _____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are ☐ attached or ☐ as follows _____

III. JUDGMENT

3.1 The defendant is **GUILTY** of the Counts and Charges listed in paragraph 2.1 and Appendix 2.1

3.2 ☐ The Court **DISMISSES** Counts _____

3.3 ☐ The defendant is found **NOT GUILTY** of Counts _____

JUDGMENT AND SENTENCE (Felony)
(RCW 9.94A.110, .120) (WPP CR 84.0400 (7/95))

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IV. SENTENCE AND OR

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court

\$ _____ Restitution to: Restitution paid in full

JASS CODE \$ _____ Restitution to: _____

RTN/RJN \$ _____ Restitution to: _____

(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV \$100.00 Victim Assessment RCW 7.68.035

CRC \$110.00 Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190

Criminal Filing fee \$ _____ FRC
Witness costs \$ _____ WFR
Sheriff service fees \$ _____ SFR/SFS/SFW/SRF
Jury demand fee \$ _____ JFR
Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.030
WRF \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.030

PCM \$ _____ Fine RCW 9A.20.021; [] VUCSA additional fine deferred due to indigency RCW 69.50.430

CDE/LDI/ \$ _____ Drug enforcement fund of _____
FCD/NTF/SAD/SDI RCW 9.94A.030

CLF \$ _____ Crime lab fee [] deferred due to indigency RCW 43.43.690

EXT \$ _____ Extradition costs RCW 9.94A.120
\$ _____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1,000 maximum) RCW 38.52.430

\$ _____ Other costs for: _____

\$ 210.00 TOTAL RCW 9.94A.145

[] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:

[] shall be set by the prosecutor
[] is scheduled for _____

JUDGMENT AND SENTENCE (Felony)
(RCW 9.94A.110, .120) (MPP CR 84.0400 (7/95))

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[] RESTITUTION. See Jule attached, Appendix 4.

[] Restitution ordered above shall be paid jointly and severally with:
NAME of other defendant CAUSE NUMBER (Victim Name) (Amount\$)

RUN

[] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month-commencing _____.
RCW 9.94A.145

[] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

[] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 10.73

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73

4.2 [] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

Provided further the results of the HIV test are to be confidential but are to be provided to the victim, prosecuting attorney, community corrections officer and the public defender as necessary.

[] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county of Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 ~~The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120~~

4.4 The Defendant shall not have contact with _____ (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for _____ years (not to exceed the maximum statutory sentence.)

[] Domestic Violence Protection Order or Anti-Harassment Order is attached as Appendix 4.4.

4.5 OTHER _____

JUDGMENT AND SENTENCE (Felony)
(RCW 9.94A.110, .120) (WPP CR 84.0400 (7/95))

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4.6 FIRST TIME OFFENDER . WAIVER OF PRESUMPTIVE SENTENCE.
RCW 9.94A.030, RCW 9.94A.120.

The defendant is a first time offender. The court waives imposition of a sentence within the presumptive sentence range and imposes the following sentence:

- (a) CONFINEMENT. Defendant is sentenced to the following term of total confinement in the custody of the county jail:

90 (days) (months) on Count No. II;
____ (days) (months) on Count No. _____;
____ (days) (months) on Count No. _____.

____ days total confinement (up to 90 days).
RCW 9.94A.110

☒ Confinement shall commence immediately unless otherwise set forth here: Report by 10pm 7-7-97.

- ☒ PARTIAL CONFINEMENT. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: _____

☐ work crew RCW. 9.94A.135 ☒ home detention RCW 9.94A.180, .190 *remainder of sentence*
☒ work release RCW 9.94A.180 *30 days*

- ☐ ALTERNATIVE CONVERSION. RCW 9.94A.380.

____ days of total confinement ordered above are hereby converted to ____ hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections to be completed:

- ☐ on a schedule established by the defendant's community corrections officer.
☐ as follows: _____

- ☐ Alternatives to total confinement were not used because of: _____

☐ criminal history ☐ failure to appear (finding required for nonviolent offenders only) RCW 9.94A.380

- (b) COMMUNITY SERVICE. RCW 9.94A.120.

In addition to the ordered total confinement, defendant shall perform ____ hours of community service as approved by defendant's community corrections officer to be completed:

- ☐ on a schedule established by the defendant's community corrections officer.
☐ as follows: _____

() See additional pg for other conds of sent)
JUDGMENT AND SENTENCE (1st Time Offender Waiver of Presumptive Sentence)
(RCW 9.94A.110, .120) (WPF CR 84.0400 (7/95))

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- (c) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: 0 days CTS.

4.7 COMMUNITY SUPERVISION. RCW 9.94A.120.

Defendant shall serve 24 months (up to 24 months) in community supervision. Defendant shall report to the Department of Corrections located at West 1717 Broadway - Second Floor, Spokane, Washington 99201, 456-3260 not later than 72 hours after release from custody and the defendant shall comply with the instructions, rules and regulations of the Department for the conduct of the defendant during the period of community supervision and comply with any other conditions of community supervision stated in this Judgment and Sentence and/or Appendix A:

☐ devote time to specific employment or occupation

☐ pursue a prescribed course of secular study

☒ notify the Court or Community Corrections Officer in advance of any change in defendant's address or employment and adhere to the standard Conditions of the Department of Corrections.

☒ pay all court-ordered legal financial obligations and supervision fee of \$20.00 per month.
☐ remain within prescribed geographical boundaries

☒ No use or possession of any alcohol ~~non-prescribed controlled substance(s) and/or legend drug(s)~~ and be monitored by TASC or other approved agency at the discretion of the supervising CCO for UA & BA testing.

☒ As recommended, undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range for that offense

☐ See Additional Conditions of Sentencing

☒ Community supervision conditions: Do not frequent places of business where the primary source of income is from the sale of alcohol.

☒ Do not operate a motor vehicle without a valid driver's license and proof of insurance.
The conditions of community service shall begin immediately unless otherwise set forth here: _____

☒ First year monitoring regularly required at request of TASC or other approved agency
& Second year monitoring at discretion of CCO.

JUDGMENT AND SENTENCE (1st Time Offender Waiver of Presumptive Sentence)
(RCW 9.94A.110, .120) (WPF CR 84.0400 (7/95))

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V. NOTICES AND SIGNATURES

- 5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090
- 5.2 **LENGTH OF SUPERVISION.** The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145.
- 5.3 **NOTICE OF INCOME-WITHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030
- 5.4 **RESTITUTION HEARING.**
☐ Defendant waives any right to be present at any restitution hearing (sign initials): _____
- 5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

Cross off if not applicable:

5.6 **FIREARMS.** You may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

JUDGMENT AND SENTENCE (Felony)

(RCW 9.94A.110, .120) (WFF CR 84.0400 (7/95))

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Cross off if not applicable:

~~5.7 SEX OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense, you are required to register with the sheriff of the county of the state of Washington where you reside. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~

~~If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.~~

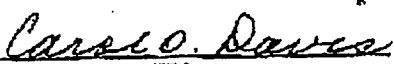
~~If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 10 days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county and you must give written notice of your change of address to the sheriff of the county where last registered, both within 10 days of moving. If you move out of Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.~~


5.8 OTHER: _____

DONE in Open Court in the presence of the defendant this 20 day of

June, 1997.


JUDGE
Print KATHLEEN M. O'CONNOR
SUPERIOR COURT JUDGE


CAROL O. DAVIS
Deputy Prosecuting Attorney
WSBA # 13244


RICHARD L. BECHTOLT
Attorney for Defendant
WSBA# 11603


JAMES DOUGLAS RIVARD
Defendant

Translator signature/Print name: _____

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

JUDGMENT AND SENTENCE (Felony)

(RCW 9.94A.110, .120) (NFF CR 84.0400 (7/95))

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CAUSE NUMBER of this case: 94-1-00132-0.

I, _____, Clerk of this Court,
certify that the foregoing is a full, true and correct copy of the Judgment
and Sentence in the above-entitled action, now on record in this office.
WITNESS my hand and seal of the said Superior Court affixed this date:

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. 016822802

Date of Birth 10/20/1967

(If no SID take fingerprint card for State Patrol)

FBI No.

Local ID No. 0224835

PCN No.

Other

Alias name _____

SSN 537-80-2397, DOB 10/20/1967:

Race:

☐ Asian/
Pacific
Islander

☐ Black/
African-
American

☒ Caucasian

Ethnicity:

☐ Hispanic

Sex:

☐ Male

☐ Native
American

☐ Other: _____

☐ Non-
hispanic

☐ Female

FINGERPRINTS: I attest that I saw the same defendant who appeared in Court on this document
affix his or her fingerprints and signature thereto.

Clerk of the Court: _____

Deputy Clerk. Dated: 6-20-97

DEFENDANT'S SIGNATURE:

Left 4 fingers taken
simultaneously

Left
Thumb

Right
Thumb

Right 4 fingers taken
simultaneously

JUDGMENT AND SENTENCE (felony)

(RCW 9.94A.110, .120) (WPP CR 84.0400 (7/95))

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 25923-4-III
)	
vs.)	CERTIFICATE
)	OF MAILING
JAMES D. RIVARD,)	
)	
Petitioner.)	

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2008 NOV -5 PM 4:50

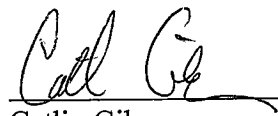
I certify under penalty of perjury under the laws of the State of Washington that on November 5, 2008, I mailed copies of Petition for Review in this matter to:

Andrew J. Metts
Attorney at Law
1100 W. Mallon
Spokane, Washington 99260

and to :

James D. Rivard
SRM Development
111 N. Post, Suite 200
Spokane, WA 99201

Signed at Seattle, Washington on November 5, 2008.



Catlin Gibson
Legal Assistant